

## **On the Road Again**

### **Progressive Countries Score a Realpolitik Victory in Durban While the Real Climate Continues to Heat Up**

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# 1. Introduction

Setting a new record, the Durban climate conference finished in the early morning of Sunday, 11 December, one and a half days after its scheduled end. The conference took place against the background of another year of increasingly urgent warnings. 2010 saw an almost unprecedented 6% jump of global energy-related CO<sub>2</sub> emissions compared to 2009. The Intergovernmental Panel on Climate Change's (IPCC) special report on extreme weather events further substantiated the increasing risks the world faces if no strong restraints on greenhouse gas emissions are put in place. The International Energy Agency (IEA) in its annual World Energy Outlook warned that the door to keeping global temperature increase below 2°C is closing fast. If the world continues on a "business as usual" trajectory, by 2017 enough carbon-intensive infrastructure investments will have been locked in to generate all the energy-related emissions that are permissible up to 2035 to stabilise the atmospheric CO<sub>2</sub> concentration at 450ppm, which gives a 50% of staying below 2°C – "leaving no room for additional power plants, factories and other infrastructure unless they are zero-carbon, which would be extremely costly. Delaying action is a false economy: for every \$1 of investment avoided in the power sector before 2020 an additional \$4.3 would need to be spent after 2020 to compensate for the increased emissions."<sup>1</sup>

To top it all off, on the first day of the conference news reports indicated that Canada was planning to withdraw from the Kyoto Protocol, which was confirmed on the first Monday after the conference. There seems to be an emerging pattern of getting bad news on the conferences' first day. In Cancún, Japan had forcefully reaffirmed its position on the first day of the conference that it was not going to join a second commitment period of the Kyoto Protocol.

Nevertheless, despite these and other obstacles the fruit of all the overtime labour in Durban was an agreement on a second commitment period of the Kyoto Protocol, a mandate to launch negotiations on a new comprehensive climate agreement, and decisions to push forward near-term climate action on the basis of the Cancún Agreements. This outcome constitutes a major victory for the EU and the most vulnerable countries, the small island developing states (SIDS, united in the Alliance of Small Island States, AOSIS) and the least developed countries (LDCs), who had pushed for such a negotiating mandate against the strong resistance of the USA, India, China and others.

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<sup>1</sup> International Energy Agency (2011): World Energy Outlook 2011, Executive Summary, p. 2, [http://www.worldenergyoutlook.org/docs/weo2011/executive\\_summary.pdf](http://www.worldenergyoutlook.org/docs/weo2011/executive_summary.pdf) (accessed 15 December 2011).

This report lays out the main developments in Durban and assesses the main outcomes. It is structured along the Bali roadmap for a future climate agreement that was agreed at the Bali climate conference in 2007. The Bali roadmap comprises negotiations under two tracks. First, the Ad Hoc Working Group on Further Commitments by Annex I Countries under the Kyoto Protocol (AWG-KP), established at the conference in Montreal in 2005, has been negotiating future emission targets for Annex I countries. As the Kyoto Protocol's first commitment period expires in 2012, the AWG-KP is to agree on new targets for a second commitment period post-2012 as well as associated rules for accounting emissions. Second, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) has also been negotiating commitments for Annex I countries, intending to cover those that have not ratified the Protocol – that is, the USA. In addition, the LCA negotiates “Nationally appropriate mitigation actions” of developing countries, which are to be supported by Annex I countries with technology, financing and capacity-building. Both the actions and the support are to be “measurable, reportable and verifiable”. The LCA also negotiates how such support for developing countries' mitigation actions may be delivered as well as how developing countries may be supported in adapting to the impacts of climate change.

The first part of this report is devoted to the negotiations and outcome on the legal form of the future climate regime (that is, the mandate) and the Kyoto Protocol. The second part discusses near-term action along the “building blocks” of the Bali Action Plan.

## **2. What Future Framework?**

### **2.1 Legal Form**

Ever since the start of the climate regime, negotiations have been characterised by fundamental differences of opinion on who should contribute how much to the fight against climate change and in particular who should go first. The so-called developing countries point to the historical responsibility of the so-called developed countries (listed in Annex I of the United Framework Convention on Climate Change (UNFCCC) and hence called Annex I countries) for creating the climate problem and insist that Annex I countries should therefore take the lead in combating climate change, as they have committed to in Art. 3.1 of the UNFCCC. Annex I countries for their part point to the rising emissions in the large rapidly industrialising countries of the South and demand that they need to step up their efforts as well. This issue has increasingly come to a head over the recent years as the Kyoto Protocol's first commitment period expires at the end of 2012, raising the question what will be the future framework after 2012.

The Bali roadmap was supposed to culminate in a new agreement at the 2009 climate conference in Copenhagen, but instead of the hoped-for treaty the outcome was only the non-binding “Copenhagen Accord” that was not even agreed to by all countries. It contained non-binding emission reduction pledges by the major developed and developing countries, which were reaffirmed at the Cancún conference in 2010. The main stumbling block towards achieving a legally binding outcome is that, based on their fundamentally different views on who has which responsibility, countries hold equally different views on what should be the legal outcome of the negotiations.

The Annex I countries that have ratified the Kyoto Protocol are not prepared to go any further without significant action by the USA and the rapidly industrialising countries of the South. Ideally, they want to have the Protocol replaced by a new universal framework that also covers the USA and the rapidly industrialising countries. In particular Canada, Japan and Russia explicitly stated that they refuse to be bound under a second Kyoto period. Australia, the EU, Norway and Switzerland stated that they would prefer a universal framework but could also accept a two-track outcome under the condition that it provides for sufficient efforts by all major emitters.

The G-77 and China have wanted the Kyoto Protocol to continue as a reflection of industrialised countries’ historical responsibility, in parallel to a separate outcome under the LCA. They have held a continuation of the Protocol to be a key prerequisite for maintaining the distinction between industrialised and developing countries. Creating a unified treaty would in their view blur this distinction and create a “slippery slope” where developing countries would soon also be asked to adopt binding emission targets. They have therefore aimed for two separate results from the two AWGs: On the one hand new post-2012 emission targets for Annex I countries under the Kyoto Protocol and on the other hand an agreement under the UNFCCC. The latter would cover commitments by the USA, mitigation actions by non-Annex I countries, adaptation, as well as financial and technological support from Annex I to non-Annex I countries. Developing countries also posited that no agreement would be possible under the AWG-LCA unless there was an agreement on a second commitment period under the Kyoto Protocol.

However, there are also differences within the G-77. The countries that are most vulnerable to the impacts of climate change, the SIDS and the LDCs, have submitted proposals for a new legally binding protocol under the Convention that would work in parallel to the Kyoto Protocol. By contrast, in particular China, India and Saudi Arabia have held that Conference of the Parties (COP) decisions would be sufficiently binding and that first the content of the agreement should be determined before discussing its legal form. Their position strongly depends on the (lack of) willingness of the USA to commit to a sufficiently ambitious emission target in a legally binding form.

The USA for their part have demand a new structure that should be “very different” from the Kyoto Protocol. According to the USA, the future regime should be based on a

“pledge and review” bottom-up approach. In this version, each country would basically determine its own level of ambition and the international system would mainly serve as a notary to collect and regularly review the implementation of these pledges – as has been done with the pledges in the Cancún Agreements. The USA have also insisted that the degree of bindingness must be the same for all the major emitters – a demand that is vehemently rejected by developing countries.

Going into Durban, developing countries were explicit that their top priority was securing a continuation of the Kyoto Protocol. Given that the Protocol’s commitments expire at the end of 2012, the Durban conference was basically the last chance to give it a new lease on life. The African group hence stated that they would not allow African soil to become the graveyard of the Protocol, and AOSIS and the LDCs made similarly forceful statements. The EU adopted a position according to which they would be open to a second commitment period if there was agreement on a mandate or roadmap to negotiate a new legally binding treaty for all countries by 2015 in exchange. However, Brazil, China, India and other developing countries rejected linking the Kyoto Protocol to agreement on a negotiation mandate for a new treaty. They argued that agreeing a second Kyoto period was a legal and moral obligation of industrialised countries and not a bargaining chip to extract concessions from developing countries. The USA took the position that they did not believe the conditions were ripe for such a mandate, and that “we would be better served” by focusing on implementing existing agreements and scaling up actions.

However, China was very careful to show flexibility. Chief negotiator Su Wei and Minister Xie both indicated in Durban that China might be willing to consider adopting legally binding commitments for the time after 2020 if its key asks were met. China’s conditions were: commitment of the EU and others to a second Kyoto period; actual delivery of the USD 30 billion fast start financing pledged in Copenhagen, and a process to ramp up climate finance to the USD 100 billion annually by 2020 also pledged in Copenhagen; implementation of the Cancún Agreements on the Green Climate Fund, technology, mitigation, adaptation, and transparency; a prompt start on the 2013-15 review of adequacy; and clear adherence to the Convention’s principles of equity and common but differentiated responsibilities and respective capabilities in any longer-term negotiations. While this may sound like a lot, in practice it only amounts to full implementation of the Bali Roadmap.

Another crucial question was the timeline for a mandate and a second Kyoto period. AOSIS demanded that a new agreement should be negotiated during 2012 and be implemented from 1 January 2013. They stated that they would not allow an outcome that did not allow for increasing the level of ambition well before 2020, given that the current emission reduction pledges are much too weak to prevent an increase of global mean temperature above 2°C. The EU had taken the position that a new agreement should be agreed by 2015 at the latest, to become operational as soon as possible thereafter. By contrast, in particular China, India and the USA argued that negotiations

on a new framework should, if at all, only start in 2015, after the completion of the review of adequacy scheduled for 2013-2015. The US was especially forceful in its position that increasing the level of ambition prior to 2020 was not in the cards from their point of view. Chief negotiator Jonathan Pershing even publicly denied that refusing to increase the level of ambition before 2020 would imperil achievement of the 2°C target.

On the length of a second Kyoto period, AOSIS and other developing countries stated that it should be no longer than five years in order to prevent lock-in of too weak a level of ambition. The EU, however, wanted a second commitment period to run till 2020 in order to be in line with its domestic legislation which also runs till 2020.

To pull together an agreement on the big picture issues the South African presidency operated an “Indaba” process. “Indaba” is a word from Zulu that denotes a meeting of wise people to discuss matters of great importance to the community in order to establish a common mind.<sup>2</sup> In these meetings the Presidency put together a paper of options which were then gradually narrowed down into a decision text.

A first Chair’s proposal came out on the morning of Friday 9 December. It envisaged “to launch a process in order to develop a legal framework applicable to all under the United Nations Framework Convention on Climate Change after 2020, through a subsidiary body under the Convention to be established at the 18th session of the Conference of the Parties”, that is, to be established next year. The process was to be completed as early as possible but not later than 2015.<sup>3</sup>

However, while this text was acceptable to the US, China and India, it was roundly rejected by the EU, AOSIS and LDCs as much too weak. These three blocks of countries had formed a coalition and issued a joint statement on Friday morning that demanded agreement on a second Kyoto period and a “robust mandate and roadmap” for a new legally binding instrument.<sup>4</sup> The Brazilian environment minister had also indicated in his statement to the conference that Brazil would be willing to be legally bound if other large economies were as well and South Africa had supported a mandate from the beginning. The BASIC block of Brazil, China, India and South Africa was hence internally divided.

After further discussions, a new chair’s text came out at 23:00 on 9 December. It noted “with grave concern” the gap in ambition and envisaged “to launch a process to develop a Protocol or another legal instrument applicable to all Parties under the United Nations Framework Convention on Climate Change, through a subsidiary body under the

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<sup>2</sup> [http://unfccc.int/files/meetings/durban\\_nov\\_2011/application/pdf/cop17\\_cmp7\\_indaba\\_explanatory\\_note.pdf](http://unfccc.int/files/meetings/durban_nov_2011/application/pdf/cop17_cmp7_indaba_explanatory_note.pdf) (accessed 15 December 2011).

<sup>3</sup> Chair’s Proposal, INDABA: THE BIGGER PICTURE, Friday, 9 December 2011 @ 08:00, [http://unfccc.int/files/meetings/durban\\_nov\\_2011/application/pdf/materials\\_indaba\\_9\\_dec\\_document\\_1.pdf](http://unfccc.int/files/meetings/durban_nov_2011/application/pdf/materials_indaba_9_dec_document_1.pdf) (accessed 15 December 2011).

<sup>4</sup> [http://ec.europa.eu/commission\\_2010-2014/hedegaard/headlines/news/2011-12-09\\_01\\_en.htm](http://ec.europa.eu/commission_2010-2014/hedegaard/headlines/news/2011-12-09_01_en.htm)

Convention hereby established”.<sup>5</sup> However, this text was not acceptable to India, who added a third option after “a Protocol or another legal instrument” – “a legal outcome”. However, this third option was not acceptable to the EU, AOSIS, the LDCs and many Latin American countries as “a legal outcome” does not necessarily imply a legally binding agreement.

The discussions culminated in a series of passionate exchanges in the early hours of Sunday morning. EU climate commissioner Connie Hedegaard pointed out that the EU was prepared to offer developing countries what they had demanded for many years – a continuation of the Kyoto Protocol. But in return the EU demanded that all nations should agree to be “legally bound” in a new agreement. “We need clarity. We need to commit. The EU has shown patience for many years. We are almost ready to be alone in a second commitment period. We don't ask too much of the world that after this second period all countries will be legally bound.” In return, China and India complained about being pressed to sign a deal before knowing the content and highlighted the need for equity. The Indian environment minister Jayanthi Natarajan demanded: “Am I to write a blank cheque and sign away the livelihoods and sustainability of 1.2 billion Indians, without even knowing what the EU 'roadmap' contains? I wonder if this is an agenda to shift the blame on to countries who are not responsible. I am told that India will be blamed. Please don't hold us hostage.” China's minister Xie Zhenhua demanded “What qualifies you to tell us what to do? We are taking action. We want to see your action.” However, AOSIS and the LDCs strongly resisted this framing of climate protection versus equity. When India invoked the “right to development”, Grenada retorted, “While they develop, we die in the process. Why should we accept this?”

To resolve the standoff the South African president asked the EU and India to go “into a huddle” in the middle of the conference hall. Surrounded by China, the US and others, the EU and India finally agreed to a compromise proposal suggested by Brazil according to which countries agree to negotiate “a protocol, another legal instrument or an agreed outcome with legal force.” These negotiations are to take place in a new “Ad Hoc Working Group on the Durban Platform for Enhanced Action”, which is supposed to start work in 2012 and finish as early as possible but not later than 2015. The new agreement is supposed to come into effect and be implemented only from 2020.<sup>6</sup>

In addition, countries agreed to a second commitment period for the Kyoto Protocol. However, the details of the new reduction targets (the quantified emission limitation or reduction objectives, QELROs) have not yet been decided, this will need to take place next year. The length of the second commitment period has also not been decided

<sup>5</sup> Chair's Proposal, INDABA: THE BIGGER PICTURE, Friday, 9 December 2011 @ 23:00, [http://unfccc.int/files/meetings/durban\\_nov\\_2011/application/pdf/2325\\_text-9122011-indaba.pdf](http://unfccc.int/files/meetings/durban_nov_2011/application/pdf/2325_text-9122011-indaba.pdf) (accessed 15 December 2011).

<sup>6</sup> Draft decision -/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action (Advance unedited version).



yet, options are five years (2013-17) or eight years (till 2020).<sup>7</sup> This is mostly due to the EU who in addition to the concern about its domestic legislation running till 2020 also posited that there should be coherence with the timeline of the new mandate.

## 2.2 Review

Another item for the long-term view was the review of the temperature target of keeping global warming below 2°C that was agreed in Copenhagen and Cancún, with a view to strengthening it to 1.5°C as demanded by AOSIS and the LDCs, and the progress towards achieving the target. This review is to take place in 2013-2015 and will hence feed into the final round under the new Ad Hoc Working Group on the Durban Platform for Enhanced Action. It will also coincide with the next IPCC assessment report. Parties still needed to agree on the detailed terms of reference for the Review.

In particular AOSIS, supported by the EU, demanded that the scope of the review should be restricted to the adequacy of the temperature goal and progress towards achieving it, as agreed in Cancún. However, other developing countries, in particular India, demanded to widen the scope of the review to also include the support provided by industrialised to developing countries, often also referred to as “means of implementation”. AOSIS also demanded that a dedicated body reporting directly to the COP should be established to conduct the review as in their view the subsidiary bodies do not have the resources or political profile required. Along similar lines Australia proposed a review expert body. However, the EU and other industrialised countries opposed the creation of a new body.

In the end, countries agreed to continue working on the scope of the review and considering its further definition, with a view to taking a decision at COP 18. The review should be based, inter alia, on information from various sources, including the reports of the IPCC, submissions and reports from Parties, other relevant reports from United Nations agencies and other international organizations, scientific information on the observed impacts of climate change. The review will be conducted “with the assistance” of the subsidiary bodies and shall be supported by expert consideration of the inputs noted above, inter alia, through workshops and other in-session and intersessional activities. The “expert consideration of inputs” is to be further defined at COP 18, “including possible establishment of a review expert group, to provide technical support to the review”. Subsequent reviews are to take place after each new IPCC assessment report or at least every seven years.<sup>8</sup>

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<sup>7</sup> Draft decision -/CMP.7, Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its sixteenth session (Advance unedited version).

<sup>8</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 159-167 (Advance unedited version).

## 2.3 Shared Vision

Also relating to the long term, countries have been locked into a strong controversy on what should be the overall level of ambition. According to the most ambitious scenario considered in the IPCC's fourth assessment report, to have a 50% chance of achieving the 2°C target global emissions should peak well before 2020 and be reduced by 50-85% by 2050 compared to 2000. The EU, AOSIS as well as some other developing countries such as Colombia have demanded to adopt these figures within the UNFCCC. They also pointed out that the Cancún Agreements had mandated the LCA to come to an agreement on "the numbers".

Many of the large emerging economies and other developing countries such as Bolivia, Ecuador, Egypt, and Saudi Arabia, however, have argued that these numbers cannot be considered in isolation. In their view there first of all needs to be clarity on what the implications of these goals would be for the economies of developing countries and how the effort to achieve these goals would be shared among countries in an equitable manner. Egypt posited that Annex I countries have adopted emission pathways that are not ambitious enough and now wanted developing countries to do the rest: "If two persons have two pizzas and one has already eaten one and now wants a large slice of the second pizza, something is fundamentally wrong." Annex I countries should therefore do more or would need to provide more means of implementation (finance, technology etc.) to developing countries. Issues that were put forward for inclusion into the shared vision in addition to "the numbers" hence included equity, historical responsibility, establishment of global goals for finance, technology, adaptation and capacity building, trade, response measures, intellectual property issues, low-carbon and climate-resilient society, human rights, rights of Mother Earth, right to survive, an international climate court of justice, and warfare. As answer to Egypt, Grenada posited that the implications were a concern but "the numbers" were a survival issue for AOSIS – "The amount of pizza doesn't matter if nobody is there to eat it."

Four options emerged from the discussions: to agree on "the numbers" and then discuss other issues, to first discuss the context for the adoption of "the numbers", to establish a process, or to drop the issue altogether. In the end, the process option won out. The AWG-LCA will continue to discuss these issues and report to the next COP. The text stipulates that identifying a time frame for the global peaking should not only be based on the best available scientific knowledge but also on "equitable access to sustainable development". Also, the text stipulates that decision on the goal for 2050 and the time frame for peaking "cannot be undertaken in the abstract and will necessarily involve matters related to the context for such considerations". The discussions are to include a workshop on equitable access to sustainable development.<sup>9</sup>

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<sup>9</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 1-4 (Advance unedited version).

### 3. What Near-Term Action?

In addition to clarifying the long-term perspective the Durban conference also had the task to enable near-term action on the building blocks of the Bali Action Plan and the Cancún Agreements: mitigation, adaptation, finance and technology.

#### 3.1 Mitigation

The mitigation-related negotiations on implementing the Cancún Agreements revolve around several controversial issues. One is increasing the level of ambition of the emission reduction pledges that have so far been put forward. Further crucial sub-issues are transparency (measuring, reporting and verification) and reducing emissions from deforestation and forest degradation. In addition, industrialised countries strongly champion the establishment of new carbon market mechanisms to achieve cost-effective mitigation.

##### 3.1.1 Overall Level of Ambition

The broad agreement on keeping global warming to 2°C above pre-industrial levels at most was one of the few advances of the Copenhagen conference. A series of reports that came out in 2010 unanimously conclude that the pledges countries made under the Copenhagen Accord fall 5-10 Gt short of what is needed to maintain a good chance of staying below 2°C. In particular the pledges of industrialised countries fall far short of the reduction of 25-40% by 2020 compared to 1990 as considered in the IPCC's fourth assessment report, especially when taking into account the various loopholes that exist under the Kyoto Protocol. One of the largest loopholes is the presence of "hot air", the surplus assigned amount units (AAUs) allocated to the Central and Eastern European economies in transition (EIT). The AAUs of many of these countries exceed their emissions by far even without mitigation efforts. For example, the Kyoto targets of Russia and the Ukraine are stabilisation of emissions at 1990 levels. However, due to the economic collapse in the 1990s Russia's current emissions are about 30% below 1990 levels and the Ukraine's even 50%. According to the Kyoto rules, these surpluses can be carried over to the next commitment period, thus weakening the necessity to reduce emissions even in the years to come. The targets Russia and the Ukraine have pledged for 2020 would create further surpluses: While Russia has pledged a target of 15-25% below 1990 levels by 2020, the Ukraine has pledged 20%. This target implies that even without the surplus AAUs carried over from the first commitment period, Russia and the Ukraine could in fact still increase their emissions significantly. Another important loophole are the accounting rules for land use, land-use change and forestry (LULUCF). Most Annex I countries have proposed to account their LULUCF emissions based on projections rather than historic emissions. As these projections often include increased logging, countries would thus effectively be able to hide emission increases.

The Cancún Agreements repeated the long-term goal to keep warming below 2°C, but recognised that current ambition levels are inadequate. The Cancún Agreements hence mandated mitigation workshops to deal with, inter alia, “options and ways to increase their level of ambition”. However, while the workshops did take place the question of how to raise ambition was hardly addressed. The only positive move on the ambition question in 2011 was the decision of the new Danish government to increase Denmark’s target from 30% to 40%.

The UN Environment Programme (UNEP) launched an updated version of the “gap” report it had published in 2010. The report reaffirms that global emissions need to be reduced to 44 Gt CO<sub>2</sub>-eq. by 2020 in order to get on a credible pathway to keeping global temperature increase below 1.5°C or even 2°C. However, the gap actually increased in 2011. Instead of a shortfall of 5-10 Gt as estimated in 2010 UNEP now estimates the shortfall to be 6-11 Gt – depending on whether loopholes are closed or not and whether countries that have submitted ranges of emission reductions, such as the EU offer to increase its target from 20% to 30% under specific circumstances, go to the top end of their pledges. If industrialised countries stick to the low end of their pledges and the loopholes are not closed, according to UNEP their emissions will be hardly deviate from business as usual.<sup>10</sup>

The question for Durban was therefore whether the gap between pledged and needed reductions would be recognised, and if a process would be established to close it. Such a process would for instance have to involve getting clarity on the envisaged net level of emissions in 2020, closing the loopholes, moving to the higher end of the pledges and ultimately beyond the current pledges.

While developing countries demanded that industrialised countries should increase their level of ambition and were supported by the European countries, the US argued that the Cancún Agreements do not foresee a process for narrowing the ambition gap and this should be left for the 2013-2015 review. Industrialised countries demanded that there should also be a process to assess and strengthen the level of ambition of the pledges made by developing countries. However, this was initially rejected by the major emerging economies and other developing countries. They also noted that increasing their level of ambition was closely linked to the level of support provided by industrialised countries.

In the end, countries agreed to have both the texts on developed and developing country mitigation acknowledge that there is a gap between what has so far been pledged and what is needed globally. Developed countries are urged to increase their level of ambition. In addition, the developed countries are to submit information on their

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<sup>10</sup> Bridging the Emissions Gap Report, <http://www.unep.org/publications/ebooks/bridgingemissionsgap/>, (accessed 15 December 2011)

pledges using a common template by 5 March 2012 and there will be workshops to further discuss the pledges.<sup>11</sup>

For developing countries, the decision recognises that developing countries “are already contributing and will continue to contribute to a global mitigation effort in accordance with the principles and provisions of the Convention, and could enhance their mitigation actions, depending on provision of finance, technology and capacity-building support by developed country Parties“, while “Reaffirming that social and economic development and poverty eradication are first and overriding priorities of developing country Parties, and that a low-emission development strategy is central to sustainable development, and that the share of global emissions originating in developing countries will grow to meet their social and development needs” and that developed countries „shall provide enhanced financial, technology and capacity-building support for the preparation and implementation of nationally appropriate mitigation actions of developing country Parties.” Similar to developed countries, the developing countries are to submit information on their pledges by 5 March 2012, and there will be workshops to further discuss the pledges.<sup>12</sup>

The decision that establishes the AWG on the Durban Platform has further provisions on increasing the level of ambition. It decides to launch a work plan on enhancing ambition “with a view to ensuring the highest possible mitigation effort by all Parties.” Parties and observers are invited to submit their views by 28 February 2012, and there is to be a workshop at the first negotiation session in 2012.<sup>13</sup>

As noted above, the exact targets for the countries who will join the Kyoto Protocol’s second commitment period still need to be determined. The issue of how to address the surplus AAUs from the first commitment period was also postponed to next year.

### **3.1.2 Measuring, Reporting and Verification**

Another major topic in the negotiations is the question of measuring, reporting and verification (MRV). MRV creates transparency and demonstrates that pledges and commitments are actually being fulfilled. MRV therefore is essential for being able to guarantee the environmental integrity of activities and thus the credibility of an international climate agreement. Being a proxy for a lot of other issues like mitigation, decisions on MRV seriously affect the overall outcome of any COP. Robust MRV builds trust for stronger mitigation actions and commitments.

The Bali negotiation mandate was to negotiate “nationally appropriate mitigation actions by developing country Parties in the context of sustainable development,

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<sup>11</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para 5 (Advance unedited version).

<sup>12</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para 33-36 (Advance unedited version).

<sup>13</sup> Draft decision -/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action (Advance unedited version).

supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner“. That is, developing countries agreed in Bali to take verifiable mitigation actions if these are supported by industrialised countries in an equally verifiable manner. However, the details of this deal “MRV for MRV” remained to be worked out. A further MRV question arose because of the non-participation of the USA in the Kyoto Protocol, which has significantly stronger MRV requirements for Annex I countries than the Convention. Annex I countries that have ratified the Protocol have therefore generally desired the Annex I MRV provisions under the Convention to be brought in line with those under the Protocol.

In Cancún, Parties had compromised on enhancing both Annex I and non-Annex I MRV. Developed countries are to submit annual GHG inventories and biennial reports on their progress in achieving emission reductions as well as on the provision of financial, technology and capacity-building support to developing countries. However, the USA managed to keep requirements weak. Thus, the reporting requirements for countries that take action under the Convention are still not equivalent to the reporting requirements under the Kyoto Protocol. The USA had also struggled against common reporting formats but had to give in to its inclusion in the end. In addition, the Cancún Agreements establish an international process for the assessment and review (IAR) of emissions and removals by developed countries. This provides a tool to call out countries that are not on track to reduce emissions but there is no mention of compliance.

For developing countries Cancún decided that they are to submit national communications every four years, so far there had been no set frequency. Flexibility is foreseen for least developed countries and small island developing states. As per the Convention, developed countries are to cover the full costs of preparing developing country national communications. Developing countries should also provide biennial update reports with updates on their national GHG inventories, information on mitigation actions, needs and support received.

It had also been decided in Cancún that internationally supported mitigation actions are to be measured, reported and verified domestically and will be subject to international measurement, reporting and verification according to guidelines that remain to be developed. Domestically supported mitigation actions are to be measured, reported and verified domestically in accordance with general international guidelines also still to be developed. Furthermore, the SBI is to conduct a process of international consultation and analysis (ICA) on the biennial reports in a manner that is non-intrusive, non-punitive and respectful of national sovereignty. The Cancún Agreements clarify that ICA will concern the implementation of policies and measures only, not their appropriateness. Detailed modalities for MRV and ICA were to be elaborated in the future negotiations.

In Durban, the major bones of contention regarding MRV centred on common accounting rules, the Registry, the update of guidelines for national communications, biennial reports of developed and developing countries, ICA for developing countries and international assessment and review (IAR) for developed countries.

Common accounting rules are important to ensure the comparability of mitigation actions as well as the absolute level of ambition of individual countries' as well as global emission reductions. Accounting rules may particularly differ regarding, inter alia, coverage of GHGs and sectors, metrics to convert gases to CO<sub>2</sub> equivalents, common base years, counting of domestic and international offsets, accounting for LULUCF emissions and hot air from the Kyoto Protocol. Regarding common accounting rules, the EU stressed the necessity to develop an international accounting system with common rules to increase ambition and ensure transparency while the US argued that there was no mandate for this in the Cancún Agreements and that IPCC methodologies should be used for the development of accounting rules. The EU also proposed that Annex I countries should establish a binding emission pathway or trajectory for the period until 2020 to enable a more frequent assessment whether Parties are on track with their pledges.

Further heated discussions in Durban revolved around the update of guidelines for national communications for Annex I Parties. A number of developed countries argued that equivalent requirements should apply to non-Annex I Parties as well, or to none of the Parties. Developing countries disputed the need for developing new guidelines for national communications, even though this was already foreseen in the Cancún Agreements.

Different suggestions were also put on the table regarding the Registry. Information on developing countries' mitigation actions shall be provided in this Registry to allow developing countries to find support for their actions from developed countries (finance, technology, capacity building). On the form of the Registry, Australia, for example, suggested to use a simple, workable, flexible web platform. Other parties spoke out for the Secretariat to manage the Registry. However, it was generally felt that discussions on further details regarding the Registry would have to wait until further progress was made. There were also discussions about whether information should only be provided by Parties or by agencies and other entities as well.

As for biennial update reports of developing countries, the US reiterated that the Cancún Agreements had established biennial update reports to be prepared every two years while India stressed that biennial reports of developing countries should require less efforts than those of developed countries and that they should rather be updates of the latest national communications than completely new reports. Developing countries also favoured having voluntary rather than mandatory guidelines for the biennial update reports. Moreover, India requested financing from Annex I Parties for biennial update reports of developing country parties and accentuated that ICA should not have the

same requirements as IAR. Also, Indonesia and Brazil feared that ICA would require substantial efforts and asked for ICA not to be burdensome. China, Brazil and others in particular opposed having a transparent expert review process as part of the ICA process and having an open and public discussion of the reported information under SBI. They were in favour of having only written exchanges that would result in a summary report that would be presented to but not discussed by the SBI. On nationally appropriate mitigation actions (NAMAs), New Zealand, Australia and Canada favoured using a common template which should include the underlying assumptions of the NAMA. Pakistan and other developing countries, however, opposed a common reporting format and favoured a graduated reporting model.

As relates to IAR, the left-wing ALBA countries (the Bolivarian Alliance for the Peoples of our America) demanded to establish a compliance system to monitor developed countries' commitments with penalties in cases of non-compliance. This request was supported by some of the other developing countries. It aims at binding especially those countries which do not subscribe to a second commitment period under the Kyoto Protocol. Further discussions revolved, inter alia, around objectives, comparability, timeframes for modalities and procedures and the frequency of IAR.

However, not all suggestions made were represented in the final outcome of the LCA. Following Australia's suggestion, the COP finally decided to design the Registry as a dynamic, web-based platform. The Secretariat is to develop a prototype of the Registry by SBI 36 and to manage the Registry. Based on input from SBI 36, the Secretariat is to further develop the prototype. As the Registry is to match actions seeking international support with support available, it will not only include information on NAMAs (those seeking international support as well as other individual NAMAs) but also on available and / or provided financial, technological and capacity-building support by developed countries.<sup>14</sup>

Furthermore, the COP adopted guidelines on the preparation of biennial reports by developed countries and decided that Annex I countries' first biennial reports had to be submitted by 1 January 2014, subsequent biennial reports two years after a full national communication. National communications are to be submitted every four years. When national communications are prepared, the biennial report should be included in the annex to the national communication or as a separate report. A work programme under the SBSTA was entrusted with the development of a common electronic template for reporting purposes.<sup>15</sup>

The COP adopted modalities and procedures for IAR and decided to conduct the IAR process using a technical review of information as well as a multilateral assessment of

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<sup>14</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 45-55 (Advance unedited version).

<sup>15</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 12-16 (Advance unedited version).



the implementation of emission reduction targets. Also, timetables, modalities and procedures for IAR and the revision of modalities, procedures and guidelines for the review of biennial reports and national communications were agreed in Durban. Annual national greenhouse gas inventories of developed countries will be reviewed annually, IAR of biennial reports will be conducted every two years.<sup>16</sup> The ALBA countries' request for a compliance system to monitor Annex I countries' commitments to bind those countries which do not subscribe to a second commitment period under the Kyoto Protocol was not agreed on.

Developing countries are invited to submit more information relating to NAMAs such as underlying assumptions and methodologies, sectors and gases covered, global warming potential values used, required support and estimated mitigation effects. A common reporting framework was opposed by Pakistan and other developing countries but requested by New Zealand, Australia and Canada. Implementing COP decisions of COP 16 in Cancún, SBSTA was requested in Durban to develop general guidelines for domestic MRV of unilateral NAMAs.<sup>17</sup> This means that unilateral NAMAs will be MRVed in a system other than just national communications and biennial update reports. No timeframe was set for this request in Durban. Though the Cancún Agreements include a decision to MRV internationally supported mitigation actions domestically as well as internationally according to "guidelines to be developed under the Convention", no similar decision was taken regarding internationally supported mitigation actions of developing country Parties in Durban.

For the preparation of biennial update reports of developing country parties, guidelines were adopted in Durban that shall respect the diversity of mitigation actions. Following requests put forward by developing countries, they are to be flexible as to allow non-Annex I Parties to report their activities without having to adhere to a fixed template. Correspondingly, the provisions in the guidelines use language such as "Non-Annex I Parties should" or "are encouraged to" rather than "shall". Developing countries' first biennial update reports are to be submitted by December 2014. Least developed countries (LDCs) and small island developing states (SIDS) may decide for themselves on submission timeframes for biennial update reports. Also, the COP requested the Secretariat to provide assistance on request and the GEF to provide support to developing countries for the preparation of their biennial update reports. Support by the GEF for biennial update reports shall be provided as early as possible in 2012 and cover agreed full cost funding.<sup>18</sup> Financing of biennial update reports of developing countries is therefore provided as requested by India and other non-Annex I countries.

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<sup>16</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 23-27 (Advance unedited version).

<sup>17</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 34 and 37 (Advance unedited version).

<sup>18</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 39-44 (Advance unedited version).

Finally, a timetable as well as modalities and guidelines for ICA were adopted in Durban. Given the strong initial resistance of many developing countries to have any meaningful analysis and public scrutiny, the final result provides for moderate transparency. A team of technical experts is to conduct the technical analysis and their draft summary report is to be finalized in consultation with the Party and subsequently to be presented to the SBI. It will also be made available to the public online. Furthermore, workshops are envisaged for Parties to exchange views on biennial update reports and final summary reports. No participation process, however, is provided for the public. Developed countries are urged to finance the agreed full costs of any reporting needed for ICA from new and additional resources.<sup>19</sup>

### **3.1.3 Reducing Emissions from Deforestation and Forest Degradation**

Emissions from deforestation and forest degradation account for roughly 20% of all global CO<sub>2</sub> emissions. However, it was only at COP 11 in Montreal in 2005 that addressing forests was taken up under the Convention and in 2007 the issue was included as one of the mitigation sub-items in the Bali Action Plan. The Cancún Agreements request developing countries to develop a national strategy or action plan, followed by the development of a forest reference level and a corresponding monitoring system, and the introduction of an information system on safeguards, such as respecting the rights of indigenous peoples and other stakeholders as well as issues of biological diversity and forest conservation. The Cancún Agreements envisage phases for the implementation of REDD+, with countries first developing a policy framework and capacity building, followed by demonstration activities and, in a third phase, fully MRV-able results-based actions.

This year, the main issue on the table was the overall decision on a mechanism for REDD+ that delivers adequate, predictable and sustainable finance. Furthermore, the Cancún Agreements had requested SBSTA to provide guidance on technical issues such as reference levels, measuring, reporting and verification of carbon, and information systems for the social and environmental safeguards agreed upon last year.

How to finance REDD+ activities is obviously related to the overarching question of adequate financing and therefore could only partly be addressed under this agenda item. Relating to REDD+, however, Parties have been split for a long time over the sources of funding and the role of market mechanisms for reducing deforestation, and this division also governed the Durban talks on this issue. In particular, the use of offsetting has been subject to controversies.

In Durban, Parties discussed a variety of possible REDD+ financing options. While many conceded that there should be an adequate amount of flexibility on the sources of financing that each party should be free to decide upon, many Annex I parties advocated

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<sup>19</sup> Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 56 and 58-59 and Annex IV (Advance unedited version).

for SBSTA developing modalities and procedures for market-based approaches. This was opposed mainly by the ALBA countries who underlined the importance of public funding; one suggestion from developing countries therefore foresaw text excluding offsetting and market solutions to REDD+ financing completely.

One contentious issue was the question, by whom and under what authority possible market approaches would be introduced. Australia, for example, wanted to see language making it possible to have market-based mechanisms being developed outside the UNFCCC. They regarded this as the only way to make it possible to use REDD+ credits for offsetting in regional emissions trading systems, such as the Japanese Bilateral Offset Crediting Mechanism (BOCM) or a possible Australian ETS. The rupture over the fundamentally opposed concepts to financing nearly led to the collapse of the REDD+ financing negotiations, which could only be resolved at the very last minute late on Friday night.

The final decision by the AWG-LCA<sup>20</sup> stresses once more that every REDD+ activity is to adhere to the safeguards decided at COP 16; on the sources of financing, Parties agreed to first reiterating text of the Copenhagen Accord which stipulates that financial means for REDD+ should be “new, additional and predictable“, coming from “a wide variety of sources, public and private, bilateral and multilateral, including alternative sources”. On the use of market mechanisms, the decision states that market-based approaches “could be developed by the COP”, thereby rejecting the language originally introduced by Australia and others. Moreover, the COP notes that non-market based approaches, such as “joint mitigation and adaptation approaches for the integral and sustainable management of forests” could be developed. Reference is made to the financial mechanism of the Convention to provide results-based finance, therefore enabling, for example, the Green Climate Fund to provide a dedicated REDD+ window.

Parties and observers can submit inputs on modalities and procedures for financing REDD+ actions until March 2012, which will be considered by the AWG-LCA during its sessions next year; the working group will then report back to COP 18 in Qatar.

As for the technical questions on how to set reference levels and how to operationalise the safeguards agreed upon at last year’s COP in Cancun, Parties decided that developing countries undertaking REDD+ activities are to provide a summary of information on how all safeguards mentioned in the Cancun decision are being addressed and respected.<sup>21</sup> This summary must be provided periodically and included in national communications, or communication channels agreed by the COP; moreover, the information system shall be accessible by all relevant stakeholders and updated regularly. Yet, the decision requests SBSTA to consider the need for further guidance

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<sup>20</sup> Decision [–/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras 63-73. (advance unedited version)

<sup>21</sup> Decision [–/CP.17], Draft decision on guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16, appendix I, paras 7-15 (advance unedited version).

on information systems and does not lay out explicitly a format for international reporting.

On reference levels, the decision recalls the decision of the Copenhagen COP to take into account historic data when establishing reference levels; as an interim measure, these can be based on subnational levels. Parties are invited to submit information on establishing their reference level, which will be made available on the UNFCCC website. Submissions are to be based on guidelines elaborated in an annex, which refers to the most recent IPCC guidance.

### **3.1.4 New Market Mechanisms**

A further sub-item of the mitigation negotiations under the LCA is the elaboration of “various approaches, including opportunities for using markets, to enhance the cost-effectiveness of, and to promote, mitigation actions”. Industrialised countries have taken the position that most of the financial support needed by developing countries could and should be delivered through the carbon market. At the same time most developed countries are dissatisfied with the existing Clean Development Mechanism (CDM) and have therefore proposed to develop new market mechanisms. In particular the EU defined the establishment of a new mechanism as one of its key asks for Durban and a precondition for agreeing to a second Kyoto period. In addition, Japan is currently developing a bilateral mechanism outside the UNFCCC framework, which raises the question whether credits from such mechanism may be used for meeting countries’ emission reduction pledges.

While previous sessions had seen numerous versions of longer and shorter text on the so-called “various approaches” without any agreement, negotiations in the second week of the Durban conference focussed on a streamlined option text option of two pages only.

Discussing this short text version, Parties first began again reiterating their well-known views with many developed countries speaking in favour of engaging the private sector while developing countries, in particular ALBA Parties, advocated non-market approaches to mitigation. Bolivia, for example, underlined that it wanted to see an evaluation of the existing flexible mechanisms before considering new market-based instruments. As for the market proponents, some parties such as the US wanted to see a rather open framework for new market mechanisms without specific definitions; this would have allowed countries such as Japan with their (voluntary) bilateral mechanism to count the emission reductions achieved in this non-UNFCCC scheme against their UNFCCC commitments. The EU, New Zealand and Australia advocated a top-down definition at UNFCCC level in order to maintain common standards and comparability. Therefore, they called for deciding on developing modalities and procedures for such a mechanism at Durban.

In the end, Parties agreed on text which tries to accommodate both views without committing to one of the options. Chapter E of the AWG-LCA decision on “various approaches” therefore on the one hand emphasizes that any market mechanism must comply with “standards that deliver real, permanent, additional and verified mitigation outcomes, avoid double counting of effort, and achieve a net decrease and/or avoidance of greenhouse gas emissions”<sup>22</sup>. A work programme is set up in order to come up with a framework for such approaches to be considered at COP 18. On the other hand, a new market mechanism is defined to operate under the guidance and authority of the COP, which „may assist developed countries to meet part of their mitigation targets or commitments under the Convention“<sup>23</sup>. The AWG-LCA is to develop modalities and procedures for this mechanism, again to be considered at next year’s Conference of the Parties.

This decision leaves a lot of room for interpretation and it will be not until COP 18 that markets will get a sense of its meaning in terms of private sector engagement. For both parts of the decision, views and comments can be submitted to the UNFCCC secretariat, and dedicated workshops will be held throughout 2012. The contradiction between achieving a net decrease of GHG emissions on the one hand and the possibility to assist developed countries achieving their targets on the other could lead to, for example, be addressed by operating with „no-lose targets“ or discounting of credits. Yet no matter what the outcome will be, without strengthened Annex I commitments there will hardly be sufficient demand for credits from any kind of new market-based mechanism.

### 3.2 Adaptation

Last years climate conference in Cancún had brought some significant progress to the field of adaptation:

- Adoption of an Adaptation Framework
- Establishment of an Adaptation Committee
- Establishment of a work programme on loss and damages caused through the impacts of climate change

Much of the discussion on adaptation had focused on deciding on a Framework for Adaptation in order to improve the coherence and effectiveness of adaptation actions under the Convention and negotiate a mechanism on loss and damages from those climate impacts that cannot be avoided even through active adaptation measures. These include in particular extreme weather events and sea level rise.

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<sup>22</sup> Decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para 79 (advance unedited version).

<sup>23</sup> Ibid, para 83.

Loss and damages has been one of the most contentious issues under adaptation. The issue has been pushed by AOSIS and the Small Islands Developing States (SIDS), who are at risk of being inundated with increasing sea-level rise. Not surprisingly, developed countries have had a different view on loss and damages than developing countries since they would largely be made accountable for compensation payments. In particular the USA had long blocked an open debate on the issue.

In Durban, the adaptation negotiations continued to progress. The Adaptation Committee was affirmed as the overall advisory body to the COP on adaptation, and made operational by deciding on modalities of membership, relation to the COP, and work modalities. The committee will have 16 members, a majority of which will be developing country delegates. The Adaptation Committee shall be directly accountable to the COP, but report to it through the Subsidiary Bodies. Its work will include consideration of relevant information and provision of recommendations on ways to strengthen coherence among adaptation bodies, programmes and activities within the UNFCCC; preparation of capacity overviews of regional centres (linking it to the issue of technology transfer); and the preparation of periodic overview reports on, inter alia, implementation of adaptation activities and good practices. It shall also consider technical support and guidance to Parties in their preparation of national adaptation plans.<sup>24</sup>

The Adaptation Committee shall also assist in support of the Work Programme on Loss and Damage, which was renewed for the coming year in conjunction with a renewal of the Nairobi Work Programme. There will be two series of adaptation workshops and technical papers: firstly, on assessing the risk of loss and damage associated with the adverse effects of climate change and current knowledge; secondly, on a range of approaches to address loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events.<sup>25</sup>

Finally, a process has been created to enable Least Developed Countries (LDCs) to assess their national adaptation needs and better plan their national adaptation activities accordingly. Though a wholly voluntary process, in an Annex the decision lays down guidelines on how to formulate national adaptation plans, which include: 1. laying the groundwork and addressing gaps; 2. preparatory elements; 3. Implementation strategies; and 4. reporting, monitoring and review.<sup>26</sup> The decision further lays down an invitation

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<sup>24</sup> *ibid.*, section III.

<sup>25</sup> FCCC/SBI/2011/L.35/Add.1: Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate to enhance adaptive capacity - Activities to be undertaken under the work programme. Available at <http://unfccc.int/resource/docs/2011/sbi/eng/l35a01.pdf> (Accessed 22 December 2011).

<sup>26</sup> FCCC/CP/2011/L.8/Add.1: National adaptation plans. Annex. Available at <http://unfccc.int/resource/docs/2011/cop17/eng/l08a01.pdf> (Accessed 22 December 2011).

to non-LDCs to employ the modalities for national adaptation plans, and general guidance on reporting, monitoring and evaluation.<sup>27</sup>

### 3.3 Finance

Financing efforts of developing countries to combat climate change is seen by many as one of the fundamental building blocks for an ambitious international climate regime. However, it has also been an issue of continuous dissent among developed and developing countries. Developing countries have always stressed that, in addition to GHG emission reductions, providing sufficient financial support is the other side of the responsibility of industrialised countries in combating climate change – as industrialised countries have indeed committed to in Art. 4 of the Convention. Receiving financial support is therefore a key condition for developing countries to commit to mitigation actions. While the Convention does include a Financial Mechanism, it has a very weak role, and the amounts pledged to the different funds under the UNFCCC (Special Climate Change Fund, Least Developed Countries Fund, and Adaptation Fund) have been notoriously low.

So within the various tracks of finance negotiations, the main questions to be solved ultimately boil down to the mobilization of adequate amounts of finance, and the development of a strong funding institution under the UNFCCC.

In Copenhagen, industrialised countries had pledged to commit 30 billion USD for fast start finance over three years until the end of 2012, and to mobilise 100 billion USD annually from various sources for adaptation and mitigation purposes from 2020. In Cancún, these pledges were reaffirmed, but it remained unclear what the sources of the funds should be. Furthermore, developing countries feared that fast-start financing would come from already existing instead of “new and additional” sources and would partially be provided as a loan. Answers to the question of mobilisation remained vague.

On the other hand, substantial progress was made on the institutional setting of the funding mechanism. Cancún saw the establishment of a Standing Committee as an oversight body to the Financial Mechanism of the Convention, though its role and functions were to be further defined at a later stage. Also, after general agreement in Copenhagen that a new fund should be established, a process to design a Green Climate Fund (GCF) within one year was set up. A Transitional Committee (TC) was tasked with finalising the design of the fund, and to present its outcome at the next COP. The establishment of the Green Climate Fund in Durban was seen as one of the major deliverables by many developing countries.

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<sup>27</sup> *ibid.*, sections C and D

Over the course of 2011, the 40 members of the Transitional Committee met four times in intense negotiations endeavouring to have an agreed design for the governing instrument to present in Durban. They needed to resolve some key questions, such as the relationship between the COP and the Fund, its legal status, or the role of private sector financing. It was hoped that a consensus would be reached, so that the design of the Green Climate Fund could be presented as a “package deal” to be adopted by the COP without further deliberations. In its last meeting in Cape Town in October, a compromise was struck, with every delegate feeling that they had given in on some important points to make a deal possible. However, in the very last hours, the USA objected to the outcome, followed by Saudi Arabia, citing unresolved issues in the document.<sup>28</sup> As a result, it was feared that the non-consensus draft design document sent to the COP would be reopened in the negotiations, and the work of the Committee to reach a balanced compromise would be lost.

When the Transitional Committee’s report was presented in Durban, these fears seemed to come true. However, it was not the USA but rather the ALBA countries that called the draft governing instrument “unbalanced” and demanded a reopening in an open-ended process. Two of the main points of contention were the previously-agreed role of the World Bank as an interim trustee to the fund, and the inclusion of a private sector facility aimed at leveraging private capital from sources of the TC. It was suspected that such a facility could be modelled after the World Bank’s private sector arm, the International Finance Corporation, which has been heavily criticised for targeting large companies from rich countries instead of small enterprises from poor countries, and going against principles of sustainable development.<sup>29</sup>

COP President Nkoana-Mashabane held informal consultations on the matter throughout the whole duration of the conference, and finally managed to bring Parties to approve the governing instrument of the Green Climate Fund without reopening the text. Instead, a COP decision addresses some of the concerns that were tabled.

Importantly, the Board of the Green Climate Fund is invited to select the trustee of the GCF “through an open, transparent and competitive bidding process”.<sup>30</sup> In order to appease fears of the private sector facility, the decision also tasks the board “to develop a transparent no-objection procedure to be conducted through national designated authorities[...], in order to ensure consistency with national climate strategies and plans and a country driven approach...”<sup>31</sup> That is, there is to be a procedure to ensure that

<sup>28</sup> Ballesteros, Athena: Cape Town Meeting must Get Design Of Green Climate Fund Right before Durban. WRI Insights. Available at <http://insights.wri.org/news/2011/10/cape-town-meeting-must-get-details-green-climate-fund-right-durban> (Accessed December 21, 2011).

<sup>29</sup> Bretton Woods Project: World Bank private sector approach under fire. Available at <http://www.brettonwoodsproject.org/art-567198> (Accessed 21 December 2011).

<sup>30</sup> FCCC/CP/2011/L.9: Green Climate Fund – Report of the Transitional Committee. Proposal by the President, para 16. Available at <http://unfccc.int/resource/docs/2011/cop17/eng/l09.pdf> (Accessed 21 December 2011)

<sup>31</sup> *ibid*, para 7.



funding by the GCF's private sector facility does not contravene national climate strategies and plans.

Furthermore, the Fund is given independent legal personality,<sup>32</sup> and the UNFCCC secretariat and the GEF secretariat are tasked to set up an interim GCF secretariat as an autonomous unit within the UNFCCC premises in Bonn.<sup>33</sup> Developing countries gain the possibility for direct access to funding within the GCF.<sup>34</sup> During the negotiations, various countries had offered to act as host countries for the Fund, but no agreement could be reached. Therefore, a selection process has been set up, with the GCF Board to decide on a host for the Fund and to be endorsed by the COP at its next session.<sup>35</sup> The decision also stresses the need to secure funding for the Green Climate Fund,<sup>36</sup> but unfortunately does not specify sources. The Republic of Korea, Denmark and Germany have already pledged to contribute to the start-up costs of the Fund – it remains to be seen how much funding for actions will flow to the GCF once it is fully operational.

Another institutional step was taken by further clarifying the role of the Standing Committee. It has been decided that it shall provide a forum for communication and information exchange for climate change financing bodies to promote linkages and coherence; also provide recommendations to the COP on the coherence, effectiveness, and efficiency of the operating entities of the Financial Mechanism; and prepare assessments and overview of climate finance flows based on information provided through various sources, including national communications, and so to assist the COP, among others, with the measurement, reporting and verification of support provided to developing countries.<sup>37</sup> While already stronger in its outline as compared to Cancún, the Standing Committee will likely still evolve in COPs to come.

So the institutional arrangements for financing the combat against climate change were strengthened significantly. Unfortunately, the same cannot be said for the question of mobilisation of actual funds under the UNFCCC. While long deliberations took place especially on long-term finance and the need to ramp up commitments in the period between 2013 and 2020, the final decision does not include heightened commitments on climate finance.

Just before the conference in Durban, G20 finance ministers had launched a paper on options to mobilize climate finance, prepared jointly by the World Bank, the International Monetary Fund, the OECD and the Regional Development Banks. The paper outlined sources of public and private finance, and inter alia showed ways to put a

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<sup>32</sup> *ibid*, para 11.

<sup>33</sup> *ibid* para 18.

<sup>34</sup> *ibid*, Annex, para 31.

<sup>35</sup> *ibid*, para 13.

<sup>36</sup> *ibid*, para 9.

<sup>37</sup> Draft decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, section IV, para 121.

price on carbon in bunker fuels from aviation and shipping.<sup>38</sup> It was hoped that in particular this point could be included in the final decision, and indeed text on finance from bunker fuels was included in previous versions of the decision text.<sup>39</sup> However, a group of developing countries including India, China, Brazil, Saudi Arabia and others opposed endeavours to raise an international carbon tax because it would disadvantage poorer countries if no compensation was granted – in the parlance of the talks, they wanted to ensure that new mechanisms for bunkers would involve “no net incidence” on developing countries.<sup>40</sup> However, some developed countries were strictly against an integration of the incidence issue in the relevant paragraphs.<sup>41</sup> The final decision only mentions continuation of considerations of “issues relating to emissions from international aviation and maritime transport” under a different section, and without reference to finance.<sup>42</sup>

Fast start finance provided by developed countries was welcomed, but developed countries were urged to enhance the transparency of their reporting on fulfilment.<sup>43</sup> A work programme on long term finance, including workshops, is to be set up for the course of 2012, in order to assess ways to scale up the mobilization of climate finance after 2012.<sup>44</sup> It remains questionable if such a programme will yield tangible results for secure funding.

### 3.4 Technology

Agreed in Bali 2007 as one of the building blocks for a future climate regime, technology transfer under the Convention continues to take shape. After several years of stalemate between developing and industrialised countries and a highly disputed outcome in Copenhagen, a surprisingly strong agreement had been reached in Cancún. The Cancún Agreements established a new Technology Mechanism, consisting of a Technology Executive Committee (TEC), and a Climate Technology Centre and Network (CTCN).<sup>45</sup>

<sup>38</sup> G20 Finance Ministers: Mobilizing Climate Finance. Available at [www.imf.org/external/np/g20/pdf/110411c.pdf](http://www.imf.org/external/np/g20/pdf/110411c.pdf) (Accessed 21 December 2011).

<sup>39</sup> FCCC/AWGLCA/2011/CRP.38: Update of the amalgamation text on 29 November. Available at <http://unfccc.int/resource/docs/2011/awglca14/eng/crp38.pdf> [www.imf.org/external/np/g20/pdf/110411c.pdf](http://www.imf.org/external/np/g20/pdf/110411c.pdf) (Accessed 21 December 2011).

<sup>40</sup> Hindustan times: Developing nations prevent UN stamp on carbon tax. Available at <http://www.hindustantimes.com/India-news/NewDelhi/Developing-nations-prevent-UN-stamp-on-carbon-tax/Article1-776778.aspx> (Accessed 22 December 2011).

<sup>41</sup> Earth Negotiations Bulletin: Summary of the Durban Climate Change Conference: 28 November – 11 December 2011. Available at <http://www.iisd.ca/download/pdf/enb12534e.pdf>. (Accessed 22 December 2011).

<sup>42</sup> Draft decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, section II, para 78.

<sup>43</sup> *ibid*, section IV, preamble and para 132.

<sup>44</sup> *ibid*, para 130.

<sup>45</sup> Decision 1/CP.16, The Cancun Agreements, FCCC/CP/2010/7/Add.1, para 117, available at: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> [Accessed 16 December 2011].

The TEC replaced the earlier Expert Group on Technology Transfer immediately after Cancún, and held its first meeting in September 2011 in Bonn. In its report to SBSTA, the TEC outlined its draft modalities and rules, which had not been finalised in Cancún. The TEC's modalities are based on its functions as outlined in the Cancún decision. They include six key elements: analysis and synthesis; policy recommendations; facilitation and catalysing; linkage with other institutional arrangements; engagement of stakeholders; and information and knowledge sharing.<sup>46</sup> The TEC also further developed its rules of procedure, based on the previous decisions taken in Cancún. The committee comprises 20 expert members, with 9 members from Annex I and non-Annex I countries each, and 1 each from LDCs and small island developing states. There will be at least two meetings in Bonn in 2012, which will be generally open to observers. During the first one in February 2011, the TEC will need to agree to its work programme for 2012-2013.<sup>47</sup>

At the SBSTA and COP, there was little disagreement on the Technology Executive Committee, as the main decisions had already been taken in the previous year. All Parties welcomed the report of the Committee. The COP adopted the TEC's modalities and rules of procedure, and requested the TEC to further elaborate its modalities on linkages with other relevant institutional arrangements under and outside the Convention for the COP to consider at its next session in 2012.<sup>48</sup>

The second element of the Technology Mechanism, the Climate Technology Centre and Network, proved to be more difficult, however. Decided in Cancún as an "empty shell", Parties needed to flesh out the CTCN's terms of reference, governance arrangements, and reporting lines, as well as picking a host organization for the centre over the course of the Durban conference. While compromises could be found on all of these issues in the end, they were preceded by a lot of struggle among delegations, and there are still a few potential deal-breakers that need to be sorted out.

The final decision on technology transfer is titled "Arrangements to make the Technology Mechanism fully operational in 2012"<sup>49</sup>, and adopts the CTCN's terms of reference contained in an annex to the decision.<sup>50</sup> These TORs lay out the CTCN's general mission, functions, architecture, roles and responsibilities, and governance. They further establish that the Climate Technology Centre shall be hosted within an existing institution, and Annex VIII of the decision contains detailed criteria to evaluate and select the host of the CTCN.<sup>51</sup> The TORs also maintain that the Climate Technology Centre shall provide annual reports to the COP through the Subsidiary Bodies, and that

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<sup>46</sup> Report on modalities and procedures of the Technology Executive Committee, FCCC/CP/2011/8, Annex I, available at <http://unfccc.int/resource/docs/2011/cop17/eng/08.pdf> (Accessed 20 December 2011).

<sup>47</sup> *ibid*, Annex II.

<sup>48</sup> Draft decision -/CP.17, Technology Executive Committee – modalities and procedures.

<sup>49</sup> Draft decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, section V.

<sup>50</sup> *ibid*, Annex VII.

<sup>51</sup> *ibid*, Annex VIII.

an independent performance review of the CTCN shall be conducted every four years.<sup>52</sup> CTCN and TEC are requested to establish procedures for the preparation of a joint report.<sup>53</sup> The decision requests the CTCN to elaborate its modalities and procedures based on its TORs, once it is operational.<sup>54</sup>

Importantly, the relationship between the TEC and the CTCN needed to be clarified. Developing countries had called for the TEC as a political oversight body to the CTCN in the past, while industrialised countries see it as a body of specialists without the need for political power. In the final decision, the TEC has not been given a governing function within the CTCN, but only the possibility to provide strategic recommendations, as already outlined in Cancún.<sup>55</sup> However, the same decision establishes a new advisory board to the CTCN, which is to provide guidance on and approve reports and prioritization criteria of the CTCN, as well as approve structural decisions of the Network, designation of new members, and its programme of work. It also endorses financial matters of the CTCN, and acts as a monitoring body.<sup>56</sup>

Even though this decision might result in a rather complicated governance structure of the Technology Mechanism as whole, it constitutes a workable compromise, and provides the CTCN with a political oversight body developing countries were eager to implement. It remains to be seen how this issue evolves – Parties could not reach an agreement on the composition of the board, and will continue to work on it under the AWG-LCA.<sup>57</sup> Potentially this could draw out the process for quite some time, diminishing the chance to reach the ambitious goal of operationalizing the Technology Mechanism in 2012.

Another unresolved issue with the potential to draw out negotiations is the question of how to deal with the problem of intellectual property rights (IPRs). While it is neither addressed in the Cancún Agreements nor in the final decision text of this year's COP, it has been brought up by developing countries during the negotiations, and is contained as a matter to be discussed at a later stage.<sup>58</sup> This issue has been one of the main factors of the negotiations' slow movement on technology transfer, and could re-emerge as a stumbling block if developing countries insist on a decision in this matter. Most industrialised countries have been adamant to leave decisions on IPRs out of the UN climate regime.

Finally, financing of technology transfer has still not been secured. The decision calls for various sources to be considered for funding, including, among many others, philanthropic sources, and requests the Global Environment Facility to support the

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<sup>52</sup> *ibid.*, Annex VII.

<sup>53</sup> *ibid.*, para 142.

<sup>54</sup> *ibid.*, para 135.

<sup>55</sup> *ibid.*, Annex VII.

<sup>56</sup> *ibid.*

<sup>57</sup> see FCCC/AWGLCA/2011/CRP.39, section III for unresolved issues related to technology transfer.

<sup>58</sup> *ibid.*

CTCN in its operationalization and activities.<sup>59</sup> However, there is no further link between funding and the Technology Mechanism's operation and activities as a whole, and no dedicated window for technology transfer in the Financial Mechanism of the Convention. It is unclear if the Technology Mechanism will be able to deliver viable results without clear and reliable financial backing.

### 3.5 Capacity Building

The need for capacity building in developing countries has been acknowledged as a key issue to address climate change. Adequate institutional capacity is a prerequisite to design, secure funding for, implement and MRV mitigation and adaptation actions as well as to generally report on greenhouse gas emissions. Thus capacity building has been recognised as a necessity for developing countries to adequately fulfil their responsibilities within the UNFCCC process and activities. And in fact there already is a wide range of capacity building activities which are currently conducted and supported either bilaterally or through multilateral institutions like UNFCCC, UNDP, GEF or others.<sup>60</sup> However, it has been clearly stated that there is still a need for enhanced capacity building.

It is commonly agreed that industrialised countries should support capacity building activities. In the Cancún Agreements it was thus decided that “capacity-building support to developing country Parties should be enhanced with a view to strengthening endogenous capacities”.<sup>61</sup> However, neither the needed amount of support, nor a distribution among possible donors has been specified. In the decision on the Green Climate Fund<sup>62</sup>, there is a call for establishing “thematic funding windows”. In preparation for Durban, there have been calls to enhance capacity building activities, by making this one of the funding windows.<sup>63</sup> However, in the modalities and procedures of the GCF agreed in Durban funding windows are not included.<sup>64</sup>

The Cancún conference requested the AWG-LCA to consider the following unresolved issues by COP 17:

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<sup>59</sup> Draft decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para 139, 140.

<sup>60</sup> Synthesis report on the implementation of the framework for capacity-building in developing countries, FCCC/SBI/2011/15, available at: <http://unfccc.int/resource/docs/2011/sbi/eng/15.pdf> (Accessed 16 December 2011).

<sup>61</sup> Decision 1/CP.16, The Cancun Agreements, FCCC/CP/2010/7/Add.1, Available at: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (Accessed 16 December 2011).

<sup>62</sup> Ibid.

<sup>63</sup> CAN (2011): Durban Expectations - Necessary, ambitious and achievable steps for COP17/CMP7. Climate Action Network International, <http://www.climatenetwork.org/publication/cans-durban-expectations> (Accessed 16 December 2011).

<sup>64</sup> see TC-4/3 Report of the Transitional Committee for the Design of the Green Climate Fund to the seventeenth session of the Conference of the Parties.; [http://unfccc.int/files/cancun\\_agreements/green\\_climate\\_fund/application/pdf/tc4-3.pdf](http://unfccc.int/files/cancun_agreements/green_climate_fund/application/pdf/tc4-3.pdf) (Accessed 21 December 2011).

- ways to enhance monitoring and review of capacity building
- and modalities for institutional arrangements for capacity-building

With respect to the review of capacity building activities, it was decided in Durban that “an annual in-session Durban Forum for in-depth discussion” is to be organized by the Subsidiary Body for Implementation in order to enhance the monitoring and review of the effectiveness of capacity building.

Finding modalities for institutional arrangements proved to be a more complicated matter. Previous to Durban, three text options had been put on the table, with two weak options (continuation of work within the existing groups, bodies, and GEF; encouragement of relevant institutions under the Convention to contribute to capacity building), and a stronger option requesting existing and newly established bodies to undertake capacity building activities according to their respective mandates, and to develop indicators for MRV of capacity building.<sup>65</sup>

Unfortunately, the stronger version of the relevant paragraph is not included in the final Durban outcome. Instead, the relevant bodies under the Convention are encouraged to “continue to elaborate and carry out work on capacity-building in an integrated manner, as appropriate, within their respective mandates”.<sup>66</sup> In short, there is no decision to strengthen institutional arrangements for capacity building.

This is unfortunate – capacity building is a cross-cutting issue, relating to almost all areas addressed by the UNFCCC e.g. adaptation, mitigation, especially NAMAs, as well as measuring, reporting and verification of mitigation actions. Thus, establishing one institution for capacity building may be impractical for the wide scope of capacity building needs. On the other hand, not establishing such a dedicated institution may lead to capacity building too often to be overlooked and forgotten. It would be desirable to establish at least a coordinating body, so as to streamline capacity building across the relevant thematic sectors. However, this opportunity could not be taken in Durban.

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<sup>65</sup> Work of the AWG-LCA Contact Group, Agenda item 3.6, Capacity building, version of 07 October 2011 @ 11:30. Available at [http://unfccc.int/files/meetings/ad\\_hoc\\_working\\_groups/lca/application/pdf/20111007\\_cb\\_1130.pdf](http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/20111007_cb_1130.pdf). Accessed 22 December 2011).

<sup>66</sup> Draft decision -/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para 152.

## 4. Assessment and Outlook

### 4.1 On Track Towards Legally Binding Commitments?

How to judge the Durban outcome depends on what yardstick one uses: what is possible in terms of *Realpolitik* or what is necessary to actually prevent dangerous climate change.

In terms of *Realpolitik* Durban probably achieved the maximum of what was possible. The conference decided to launch a new dedicated process to negotiate a comprehensive climate agreement, “a protocol, another legal instrument or an agreed outcome with legal force“. So progressive countries succeeded in getting a roadmap for a new treaty, despite the strong objection from in particular the USA, India and China. Indeed, there was a very real possibility that there would be no outcome at all and it is doubtful whether it would have been possible to put the process back on its feet after another such blow two years after Copenhagen.

The EU has thus re-established itself as a key player in the climate negotiations. After having been almost completely side-lined in the Copenhagen endgame, the EU came to Durban with a plan and managed to form a “green coalition” with the most vulnerable countries and two out of the four members of the BASIC group, Brazil and South Africa. In return, the EU agreed to continue the Kyoto Protocol, which many had already written off, in a second commitment period. Finally, the resolution of the issues around the roadmap and the Kyoto Protocol made it possible to go forward with the decisions on implementing the Cancún Agreements.

It is highly likely that the LCA pillar would have collapsed as well if the larger issues around the legal nature of the future regime had not been resolved. It is very easy to envisage a scenario where failure to agree to a roadmap would have stopped the EU from committing to a second Kyoto period, which in turn would have led to developing countries blocking progress under the AWG-LCA. The Earth Negotiations Bulletin notes that “it is arguable that the EU drafted the script for the central plot in Durban by setting out their stall early in the process and offering to do the heavy lifting to save the Kyoto Protocol within the context of a roadmap that put up a challenge to other parties—developed and developing.”<sup>67</sup> Apparently the USA and others had expected that the EU would cave and in the end go ahead with a second Kyoto period without getting agreement on a new roadmap. But the EU did not and as a result the Durban

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<sup>67</sup> Earth Negotiations Bulletin, Summary of the Durban Climate Change Conference: 28 November – 11 December 2011, p. 29, <http://www.iisd.ca/climate/cop17/> (accessed 14 December 2011).

conference probably produced the maximum of what anyone could have expected given the political framework conditions.

The new “Ad Hoc Working Group on the Durban Platform for Enhanced Action” is supposed to start work in 2012 and finish as early as possible but not later than 2015. However, the new agreement is supposed to come into effect and be implemented only from 2020. Until this new agreement takes effect all there is are the non-binding pledges from Copenhagen and Cancún and these are much too weak to achieve the 2°C target. The decision therefore stipulates that the new process shall raise the level of ambition and that there shall be workshops to that effect in 2012. However, there already were such workshops this year and they delivered rather few results. It is hence far from certain whether this process to raise the level of ambition is going to have any results.

A crucial lever to raise the level of ambition of developing countries is the strengthening of climate finance. However, the decisions on finance continue a set course: while structural decisions continue to get stronger, there is also an unfortunate continuation of low ambition to fill the institutions that are created by these decisions with reliable funds. Developed countries continue to set high expectations through non-binding pledges, but are often unwilling to back them up with binding commitments to dependably replenish the funding mechanisms under the Convention. Instead, bilateral channels and established multilateral channels such as the Development Banks are still the preferred method of funding, as donors retain a larger amount of control this way. Funding mechanism with direct access to finance, such as the new Green Climate Fund, are the opposite in that respect: they give a large amount of control to recipient countries, while donors retain only very little power over their disbursements, thus making earmarking of funds for special purposes impossible. Anyhow, without strong commitments to replenish the GCF with significant amounts or tapping innovative public sources of finance such as bunkers and having these flow to the GCF, it will remain a carefully crafted but empty shell.

In addition, while a lot of the reporting on Durban asserts that countries agreed to work out a deal that will force everyone in a legally binding manner to reduce emissions after 2020, that is unfortunately not true. The agreement is “to develop a protocol, another legal instrument or an agreed outcome with legal force under the United Nations Framework Convention on Climate Change applicable to all Parties“. However, apart from the question what “an agreed outcome with legal force “ is supposed to mean even a legally binding treaty must not necessarily contain legally binding commitments. The force of an agreement does not depend on what label it carries but on what content it has. The Framework Convention is a legally binding treaty that is applicable to all its Parties but it lacks legally binding emission reduction commitments. The Kyoto Protocol is a legally binding treaty applicable to all its Parties, which includes most of the world's developing countries, but it only defines legally binding emission targets for industrialised countries.



The Durban agreement stipulates a new legally binding agreement but it does not say anywhere that this agreement is supposed to include legally binding emission reduction commitments, so this question is still completely open. And it can be expected that the USA and others will continue to fight tooth and nail against having legally binding emission reduction commitments in the new agreement. Therefore, while Durban reopened the door to a regime with enforceable reduction targets that seemed to have been closed in Copenhagen, the road to get there will be long and difficult.

It also bears pointing out that this is already the second roadmap that is supposed to lead to a comprehensive global agreement. The Bali roadmap agreed in 2007 was supposed to culminate in a new treaty at the Copenhagen conference in 2009, but the result was the non-binding Copenhagen Accord that was not even agreed to in plenary.

## **4.2 Crumbling Firewalls and Shifting Alliances**

The significance of the Durban Platform is hence not so much that a new process has been launched. One may indeed wonder why launching a new process was even necessary. The Bali roadmap has not been completed yet. If the main desire was to agree that there should be a legally binding outcome, it would have sufficed to specify the mandate of the AWG-LCA accordingly. Instead, the LCA will be terminated in 2012 and a new process will be started.

And while the Bali roadmap contained a clear “firewall” between Annex I and non-Annex I, the Durban Platform does not. The new agreement is to be “applicable to all Parties” under the UNFCCC. While this does not necessarily mean that all will have the same kind of commitments – or indeed any kind of legally binding commitments as noted above –, this is clearly the intention of industrialised countries.

It is also notable that developing countries were not able to include any explicit reference to the Convention’s principles of equity and common but differentiated responsibilities (CBDR) in the text. Industrialised countries had insisted throughout the two weeks that this principle needed to be interpreted in a “dynamic manner” in line with “current economic realities”. Developing countries argued that such an interpretation would amount to amending the Convention. Nevertheless, in the endgame India had to trade away its insistence on including an explicit reference to CBDR in order to secure the weaker language on what legal outcome the new process is to have. Apparently, while the EU would have agreed to including CBDR in the text, this was non-negotiable for the USA who has for years insisted on legal parity between all major emitters. CBDR has not gone away as the new agreement will be negotiated in the framework of the Convention and hence all the principles of the Convention should also

apply to the new agreement, but it is nevertheless telling that it was not possible to include an explicit reference to one of the Convention's key principles in the text.<sup>68</sup>

What is also significant is that the old alliances are increasingly becoming unstuck. Traditionally, developing countries used to negotiate as one block in the G-77. The positions of this block were often dominated by the larger countries and also frequently hijacked by Saudi Arabia and OPEC. In recent years, however, AOSIS and the LDCs have increasingly clashed with the larger G-77 countries on what should be the way forward. While AOSIS and the LDCs have demanded to negotiate a second protocol to work alongside the Kyoto Protocol, in particular China, India and Saudi Arabia have held that form should follow function. When India held up the primacy of development in Durban, Grenada retorted, "While they develop, we die in the process. Why should we accept this?"

Brazil, China, India and South Africa for their part have in recent years also developed a distinct identity in the BASIC block – but in Durban this block fractured as well. South Africa supported a roadmap from the beginning and Brazil also swung around. China, having been made the scapegoat for the failure in Copenhagen, was extremely careful to show flexibility and highlight their achievements. Chief negotiator Su Wei and Minister Xie both indicated that China would be willing to consider adopting legally binding commitments for the time after 2020. In addition, China for the first time had its own pavilion at the conference where it showcased its emission reduction efforts. Among the BASIC countries India was hence rather alone in its hard-line positioning.

### 4.3 Progress Is Local

While the climate train was put back on the tracks in Cancún and Durban has now charted a new way forward, success is far from assured given the persisting fundamental differences between the major emitters.

It is also clear that the outcomes of the international process are driven by national politics, not vice versa. No government is going to let itself be compelled by an international treaty to cut emissions faster than it wants to. International agreements are to a large extent reflections of national will, and cannot be used to force countries to do things that they are fundamentally opposed to – as evidenced by Canada's decision to leave the Kyoto Protocol and the US decision to not ratify the Protocol in the first place. As Sergio Abranches notes in his assessment of the Durban conference, "Politics hardly moves ahead of the facts. It is not a proactive process. It is a responsive one. Politics responds to active interests in economy and society. It seldom reflects even the 'inactive majority' or the majority of 'public opinion'. Political decisions respond to 'active interest groups', to economic constraints and inducements, and to the domestic

<sup>68</sup> Lavanya Rajamani has an excellent discussion of this issue at <http://www.indianexpress.com/news/deconstructing-durban/887892/0> (accessed 16 December 2011).

correlation of power. Countries that show greater ambition of emissions reductions also have greater active political support from domestic economic and social forces to policies aiming at coping with climate change. Their domestic policies are usually more ambitious than their multilateral commitments.”<sup>69</sup>

The problem is hence not the setup of the international process as some are arguing but the lack of national will to tackle climate change seriously. Most governments are simply not willing to challenge vested interests whose business models rely on using fossil fuels. This will only change if a critical mass of voters and “green” businesses becomes vocal enough to constitute a counterweight to the incumbent industries.

It is hence encouraging that the shift to a green economy is increasingly picking up steam, even in those countries whose national governments are the greatest blockers of the international process. For instance, California, the largest US state, has this year decided to introduce an emission trading system, and other US states and Canadian provinces will probably follow suit. Another emission trading system is already in operation on the US East Coast. China is investing massively in energy efficiency and renewable energy. In 2010 it jumped to first place in terms of installed wind power capacity and will probably set another renewables record this year. It also just increased its 2015 target for solar power by 50%.<sup>70</sup> Globally, investments in renewables for the first time outstripped investments in fossil fuels in 2010. Over time these developments will unavoidably change the narrative at the political level as well. The more local, regional and national initiatives are implemented and the more pioneers become active at all levels, the more decision-makers will be encouraged or indeed pressured to embark on the necessary large-scale step-change.

In addition to the psychological momentum and the shifting of economic weight and the corresponding political power from old to new industries, ambitious action by frontrunners also induces technological learning which makes it easier for others to follow. For example, the renewables feed-in tariffs in Germany and other countries have induced massive cost reductions. The most striking case is solar PV where for each doubling of globally installed capacity the costs have dropped by 22%. While in 2004 the feed-in tariff for solar PV in Germany was USD 0.77 per kWh, it has now dropped to USD 0.23. And these trends are set to continue so that solar PV may even become cheaper than coal within this very decade – even without a carbon price.<sup>71</sup>

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<sup>69</sup> The Durban Platform: a political analysis, <http://www.ecopolity.com/2011/12/15/the-durban-platform-a-political-analysis/> (accessed 21 Dec 2011).

<sup>70</sup> UPDATE 1-China scales up solar power capacity plan by 50 pct – report, <http://af.reuters.com/article/commoditiesNews/idAFL3E7NF18G20111215?sp=true> (accessed 15 December 2011).

<sup>71</sup> Solar PV rapidly becoming the cheapest option to generate electricity, <http://www.grist.org/solar-power/2011-10-11-solar-pv-rapidly-becoming-cheapest-option-generate-electricity> (accessed 15 December 2011).

The UN climate process is nevertheless indispensable in order to lock in progress that is made domestically, to provide global transparency and hopefully at some point legal bindingness and to set the overall narrative. It is also the only forum where the small and most vulnerable countries can make their voices heard. And as Durban has once again shown these voices are indispensable for aiming at a sufficiently strong level of ambition. It was the alliance between the EU, small island states, least developed countries and other progressive developing countries that forced the USA, China and India to agree to launching a new process towards a legally binding agreement. It is also undeniable that ultimately a global deal is needed to achieve sufficiently ambitious emission reductions and prevent emissions leakage.

And the process does yield results. While Copenhagen failed to deliver the anticipated climate treaty, the summit was not without successes if seen in a broader context. The deadline imposed by the Copenhagen conference injected a significant momentum into national discussions. One country after another elaborated domestic targets and actions, and presented them to the international audience. The run-up to Copenhagen hence resulted in a much better understanding of national mitigation potentials, available policy options and actions that countries are prepared to take. This momentum would hardly have materialised without the positive pressure exerted by the Copenhagen deadline. Indeed, who would have expected a mere three years ago that countries such as China and India would put forward mitigation targets?

#### **4.4 Climate Policy of One or Multiple Speeds?**

However, the question is what the best route to achieve a sufficiently ambitious global outcome could be. Over the last 20 years the approach has been to organise all the world's countries into a global convoy. But in a convoy the speed is determined by the slowest unit. And unfortunately the UN climate convoy includes very many countries such as the USA, Canada and Russia who currently have nothing to bring to the table and countries such as Saudi Arabia and other oil-exporting countries whose sole intention is to block progress as much as possible. The amount of energy that is required just to keep Saudi Arabia in line is enormous.

Those countries who are actually serious about tackling climate change should therefore consider speeding ahead of the convoy in order to put pressure on the laggards to follow suit. One of the main reasons why progress is so slow is that many people are not convinced that it is actually possible to sharply reduce emissions without wrecking the economy. Pioneers showing that it is possible are hence critical. This could help creating a virtuous cycle where the international process serves to keep the climate issue on the agenda and at the same time catalyses bottom-up processes, which then in turn inject further momentum into the international process.

It might therefore be worthwhile if those countries who are actually serious about tackling climate change formed a high-profile climate leaders' alliance to bring together all their efforts in a publicly visible manner and further deepen their collaboration, and to in this way inject the much-needed momentum into the UN climate process. Next year's Rio+20 summit should be just the opportunity for such an undertaking.

Within the negotiations there already is coalition of like-minded countries, the so-called "Cartagena Dialogue", which includes countries from almost all negotiation groups. However, the aim of the Cartagena Dialogue is to move forward the UNFCCC process, not to push forward practical action, and it is hardly known outside the circles of climate experts.

Instead, a climate leaders' alliance might conceptually steal a leaf from the US playbook of power politics. In 2005, the USA and Australia – who at that time had a Conservative government and not yet ratified the Kyoto Protocol – launched the "Asia-Pacific Partnership on Clean Development and Climate" as a supposedly superior alternative to Kyoto which also included India, Japan, China, South Korea and at a later stage also Canada. The Asia-Pacific framing notably shut out the EU, Kyoto's greatest champion. The Asia-Pacific Partnership was launched with loud fanfare by President Bush and Australian Prime Minister Howard, a high-profile meeting at ministerial level, and included a charter, a communiqué and a work plan. The Partnership was thus able to create quite a significant amount of public attention (despite being rather empty of actual content).

The lessons for a global climate leaders' alliance would be: shut out those who are opposed to your intentions and have a high-profile setup – but this time with actual commitment and the intention to strengthen the UNFCCC process rather than undermining it.

There are many fronts where countries that are serious about tackling climate change could proceed, so a climate leaders' alliance could be composed of different work streams. At its core it might for example consist of an ambition alliance, a sustainable energy alliance and an emission trading alliance.

#### *Ambition alliance*

The current pledges will at best deliver only about half of what is needed to shift to a 2° trajectory and therefore need to be strengthened urgently. Denmark has led the way this year by increasing its target from 30% to 40%. The EU as a whole should follow by increasing its target to at least 30%.

In addition, targets should be underwritten by the adoption of credible low-carbon development strategies to assure that the targets will actually be met. One model is provided by the UK Climate Change Act, which sets legally binding emission targets through 2050.

*Sustainable energy alliance*

UN Secretary-General Ban Ki-Moon in September launched the “Sustainable Energy for All” initiative. The initiative calls for private sector and national commitments to reach three objectives by 2030: Ensuring universal access to modern energy services, doubling the rate of improvement in energy efficiency and doubling the share of renewable energy in the global energy mix. This initiative is the Secretary-General’s central initiative for the Rio summit and takes place in the context of the UN General Assembly having declared 2012 to be the “International Year of Sustainable Energy for All”.

Obviously, this initiative will only succeed if countries put their weight behind it. Industrialised countries should offer developing countries comprehensive decarbonisation partnerships that should go much beyond current cooperation models. In essence, if a developing country is ready to embark on an ambitious transformation of its energy system, industrialised countries should stand ready to provide large-scale support. One model could be the emerging South African Renewables Initiative (SARI). In particular, Germany and other frontrunner countries that have pioneered this instrument should aggressively promote the further spread of renewables feed-in tariffs. The existing International Feed-In Cooperation (IFIC) should be further strengthened financially and personally and a mechanism should be developed to co-finance feed-in tariffs in developing countries. Such a mechanism could for example be anchored in the Green Climate Fund.

*Emission trading alliance*

While during the last decade emissions trading was mostly spearheaded by the European countries, the development of domestic emission trading systems (ETS) now seems to be picking up speed. Australia recently passed emission trading legislation, and China is developing pilot systems in several provinces and cities with a view to having a national system by 2015. The examples from the US have been mentioned already and South Korea is also planning to introduce a national ETS by 2015. Furthermore, Brazil’s second richest state Rio de Janeiro also recently announced its intention to launch an ETS by 2015 and Rio is also in consultation with other Brazilian states.

Incidentally, 2015 has just been set to be the end date of the new negotiation process launched in Durban. The endgame of the Durban Platform might hence play out in the context of a very substantial share of global emissions being covered by domestic emission trading systems, which should constitute a rather favourable environment for agreeing to a global framework. Every possible effort should be expended to make this scenario a reality. In addition, a high-level dialogue should be established to promote compatible designs of these new systems in order to develop a globally linked emission trading system. ETS need to be carefully designed and the lessons from the early EU ETS phases should be taken into account, e.g. when setting adequate caps or when considering the role of offsetting. While dialogue initiatives on emission trading do

already exist, such as the International Climate Action Partnership, these are so far rather low-level and not embedded in a high-level framework of driving for change.

Wiser heads would certainly be able to come up with even more arenas where increased international cooperation would be highly beneficial, for example in the area of adaptation. Importantly, after having launched, all of the above initiatives could easily be brought back to the UNFCCC process – be it as notification of strengthened pledges or by being registered as supported NAMAs. Such a move would eventually complete the virtuous circle.